

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

IN RE: Robert Gray, Lance Sagers,)
David Moffett, and Brian Johnson) C.A. No.
)

**PETITION FOR THE APPOINTMENT OF COUNSEL PURSUANT
TO 10 DEL. C. § 3925 AND SUPREME COURT RULE 68**

Petitioner, Delaware Department of Justice, through the undersigned Deputy Attorney General, requests the appointment of counsel to represent defendants Robert Gray, Lance Sagers, David Moffett, and Brian Johnson in *Lewis v. Foster, et al.*, C.A. No. 04-1350-GMS, a civil action in the United States District Court for the District of Delaware, for the following reasons:

1. The Delaware Department of Justice represents Robert Gray, Lance Sagers, David Moffett, and Brian Johnson who are named as defendants in *Lewis v. Foster, et al.*, C.A. No. 04-1350. The plaintiff, Jimmie Lewis, is a sentenced inmate who has been placed by order of the Superior Court at the Jane E. Mitchell Building of the Delaware Psychiatric Center (“DPC”). Defendants Gray, Sagers, Moffett, and Johnson are state employees. Lewis has alleged that Gray, Sagers, Moffett, and Johnson violated his civil rights.

2. The Department of Justice has determined that there is a conflict of interest in representing the defendants arising from 29 Del.C. §2504. Therefore, the Department of Justice hereby petitions the Superior Court of Delaware, Kent County, pursuant to 10 Del. C. § 3925 and Rule 68 of the Delaware Supreme Court Rules, for referral to the President Judge of the Superior Court to appoint an attorney from the private bar to

represent Robert Gray, Lance Sagers, David Moffett, and Brian Johnson in the case of *Lewis v. Foster, et al.*, C.A. No. 04-1350. Joseph Schoell, Esq. from the law firm of Wolf Block Schorr and Solis-Cohen LLP has been retained by the Department of Health and Social Services to represent and advise that agency with regard to all matters concerning DPC, and is familiar with the *Lewis v. Foster, et al.* action.

3. Robert Gray and Lance Sagers have both signed acknowledgements "that the Deputy Attorneys General by whom [they are] presently represented have explained to [them] that a conflict of interest exists that precludes their continued representation of [them] in this litigation. [They] do not oppose the withdrawal of Deputy Attorneys General Ilona Kirshon and Gregory Smith, conditioned upon their replacement by other counsel at State expense pursuant to 10 Del. C. § 3925." *See* Ex. A and B. David Moffett has also been made aware of the conflict, but declined to sign a similar acknowledgement. The undersigned have contacted Brian Johnson through both e-mail and by hand-delivery of documents to his place of employment, but Mr. Johnson has not responded to give his position regarding the instant petition for appointment of conflict counsel.

WHEREFORE, Petitioner respectfully requests this Honorable Court to enter an Order appointing counsel to represent Robert Gray, Lance Sagers, David Moffett, and Brian Johnson in *Lewis v. Foster, et al.*, C.A. No. 04-1350.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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Dated: October 18, 2007

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
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ORDER

This _____ day of _____, 2007.

WHEREAS, the Department of Justice having requested Appointment of Conflict Counsel to represent Robert Gray, Lance Sagers, David Moffett, and Brian Johnson, and

WHEREAS, there being good cause shown for granting the Petition;

IT IS HEREBY ORDERED the Department of Justice's petition for appointment of counsel pursuant to 10 *Del. C.* § 3925 and Rule 68 of the Delaware Supreme Court Rules to represent Robert Gray, Lance Sagers, David Moffett, and Brian Johnson in the United States District Court for the District of Delaware in *Lewis v. Foster, et al.*, C.A. No. 04-1350-GMS, is GRANTED.

IT IS SO ORDERD.

President Judge